

United States Court of Appeals  
for the Fifth Circuit

APR 12 2023

No. 22-50458

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

JOE HOLCOMBE, *Individually, as Heirs at Law and as Representatives of*  
THE ESTATE OF JOHN BRYAN HOLCOMBE, *Deceased*; CLARYCE  
HOLCOMBE, *Individually, as Heirs at Law and as Representatives of* THE  
ESTATE OF JOHN BRYAN HOLCOMBE, *Deceased*,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

MARGARETTE VIDAL; MONICA SHABBIR; ROBERT VIDAL;  
RAMIRO VIDAL, JR.,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

CHARLENE UHL, *Individually, as Heir at Law and as Representative of*  
THE ESTATE OF HALEY KRUEGER, *Deceased*,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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GARY RAMSEY, *Individually and as Independent Co-Administrator of THE ESTATE OF THERESE JO ANN RODRIGUEZ, Deceased*; RONALD RAMSEY, JR., *Individually and as Independent Co-Administrator of THE ESTATE OF THERESE JO ANN RODRIGUEZ, Deceased*,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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LISA McNULTY, *Individually and as personal representative of THE ESTATE OF TARA McNULTY, and Individually and as personal representative of H.M. and J.M., two minor children*,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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KATI WALL, *Individually and as Personal Representative of THE ESTATE OF DENNIS JOHNSON and THE ESTATE OF SARA JOHNSON*; MICHAEL JOHNSON, *Individually and as Personal Representative of THE ESTATE OF DENNIS JOHNSON and THE ESTATE OF SARA*

JOHNSON; DENNIS NEIL JOHNSON, JR.; CHRISTOPHER  
JOHNSON; DEANNA STATON; JAMES GRAHAM,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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REGINA AMADOR, *Individually and As Independent Administratrix of* THE  
ESTATE OF RICHARD C. RODRIGUEZ, *Deceased, a/k/a* RICARDO  
RODRIGUEZ; JOSE RODRIGUEZ; GUADALUPE RODRIGUEZ,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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FARIDA BROWN,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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CHRISTOPHER WARD, *Individually Representative of* THE ESTATES OF  
JOANN WARD, *Deceased,* and B.W. *Deceased Minor, and as Next of Friend*  
R.W., *a Minor,*

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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KRIS WORKMAN,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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DAVID COLBATH,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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DEBORAH BRADEN, *Individually and as Independent Executor of THE ESTATE OF KEITH ALLEN BRADEN*; ELIZABETH BRADEN, *Individually and as A/N/F of Z.Z., a Minor*; BENJAMIN CORRIGAN, *Individually and as Independent Executor of THE ESTATE OF ROBERT MICHAEL CORRIGAN and SHANI CORRIGAN*; PRESTON CORRIGAN; KARA BOYD (MARSHALL); MARTINA PACHAL, *Individually and as Independent Administratrix of the Estate of Robert Scott*

*Marshall and as Independent Executrix of* THE ESTATE OF KAREN SUE MARSHALL; ZACHARY POSTON; JIMMY STEVENS, *Independent Executor of* THE ESTATE OF PEGGY LYNN STEVENS WARDEN; JENNIFER RACEY (WARDEN); PATSY MCCAIN,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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KYLE WORKMAN; MORGAN HARRIS,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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DALIA LOOKINGBILL, *Individually and as Guardian of* THE PERSON and ESTATE OF R.T., *a minor, and Individually and as Guardian of* THE ESTATE OF E.G. *deceased minor,*

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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ROSANNE SOLIS; JOAQUIN RAMIREZ,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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MARGARET MCKENZIE,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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FRED CURNOW; KATHLEEN CURNOW,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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JUAN MACIAS; JENNIFER MACIAS,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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KIP WORKMAN; JULIE WORKMAN,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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CHANCIE MCMAHAN, *Individually and as Next Friend of R.W., a  
Minor*; SCOTT HOLCOMBE,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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DAVID EUGENE COLBATH, *As Next of Friend of O.C.,*

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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KRIS WORKMAN, *As Next of Friend of E.W.*; COLBEY WORKMAN, *As Next of Friend of E.W.*,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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JOHN PORTER HOLCOMBE, II, *Individually, and as Independent Administrator of THE ESTATE OF CRYSTAL HOLCOMBE, and as Wrongful Death Beneficiary of CRYSTAL HOLCOMBE, JOHN BRYAN HOLCOMBE, KARLA HOLCOMBE, and C.B.H., a Minor,*

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellee/Cross-Appellee,*

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COLBEY WORKMAN,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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ROBERT BRADEN; REBECCA METCALF; BRENDA MOULTON,



*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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JOHN PORTER HOLCOMBE, II, *As Next Friend of Minors* E.J.H. and  
P.J.H., *and as Independent Administrator of THE ESTATES OF Minors*  
G.L.H., E.R.H. and M.G.H.,

*Plaintiff—Appellee/Cross-Appellant,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee,*

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JESSICA MOULTON; WILLIAM LANE,

*Plaintiffs—Appellees/Cross-Appellants,*

*versus*

UNITED STATES OF AMERICA,

*Defendant—Appellant/Cross-Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas

USDC Nos. 5:18-CV-1151, 5:18-CV-555,  
5:18-CV-712, 5:18-CV-881, 5:18-CV-944,  
5:18-CV-949, 5:18-CV-951,  
5:19-CV-1300, 5:19-CV-1301,

5:18-CV-555-XR

5:19-CV-1318, 5:19-CV-1481,  
5:19-CV-184, 5:19-CV-289, 5:19-CV-506,  
5:19-CV-678, 5:19-CV-691, 5:19-CV-705,  
5:19-CV-706, 5:19-CV-714, 5:19-CV-715,  
5:19-CV-805, 5:19-CV-806, 5:19-CV-953,  
5:19-CV-972, 5:20-CV-109, 5:20-CV-368,  
5:20-CV-991

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**UNPUBLISHED ORDER**

Before CLEMENT, SOUTHWICK, and HIGGINSON, *Circuit Judges*.

PER CURIAM:

The district court entered final judgment April 5, 2022. The United States timely filed notice of appeal. Plaintiffs timely filed their cross-appeal. Briefing commenced. Throughout the appellate process, the parties have been engaged in mediation. They have now reached a settlement agreement which requires the district court to appoint guardians *ad litem* and approve settlement terms for minor plaintiffs and adult-incompetent plaintiffs.

The district court was divested of jurisdiction by the filing of a timely notice of appeal. *Alvestad v. Monsanto Co.*, 671 F.2d 908, 911 n.2 (5<sup>th</sup> Cir.) cert. denied, 459 U.S. 1070 (1982). Thus it cannot grant a motion unless this court returns jurisdiction. *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 329 (5<sup>th</sup> Cir. 2004). Rule 12.1 of the Federal Rules of Appellate Procedure and Rule 62.1 of the Federal Rules of Civil Procedure permit a district court to indicate how it would rule on a motion if the circuit court were to return jurisdiction. The district court has indicated that it is prepared to grant Plaintiffs' motions.

Accordingly, we ORDER LIMITED REMAND of this case to the district court to grant Plaintiffs' motion for appointment of guardian *ad litem* and to rule on motion to approve settlement on behalf of any minor or adult-incompetent plaintiff. We otherwise retain jurisdiction.